ALUMINA DEVELOPMENT CORPORATION OF UTAH

IBLA 83-603 Decided December 7, 1983

Appeal from decision of the Bureau of Land Management declaring certain of appellant's claims to be null and void, declaring certain of appellant's claims to be null and void in part, directing appellant to declare which portions of certain claims it desires to elect to hold, and advising appellant that certain of its claims had previously been declared to be invalid. 3833 Exhibit "A" (U-942).

Affirmed in part and modified in part.

1. Mining Claims: Placer Claims

   An association of claimants may locate an association placer claim encompassing up to 160 acres. The permissible size of the claim is dictated by the number of parties in the association. No such location shall include more than 20 acres for each individual claimant.

2. Mining Claims: Placer Claims

   If the persons locating placer mining claims form a corporation with each owning stock in proportion to their claims, the locations are not invalid. However, if persons merely lend their names to a corporation in order to enable it to acquire more ground than is allowed, the locations are invalid. The policy and objective of 30 U.S.C. § 35 (1976) is to limit the quantity of placer mineral land which may be located by one person to 20 acres per claim. The corporation can not be looked upon as an association, as contemplated by 30 U.S.C. § 35 (1976).

3. Mining Claims: Placer Claims

   Any scheme or device entered into whereby one individual is to acquire by location an amount or portion of a placer mining claim in area more than 20 acres constitutes a fraud upon the Government, from which title is to be acquired, and any location made pursuant to such scheme or device is without legal support and void.

4. Administrative Procedure: Burden of Proof--Bureau of Land Management--Evidence: Burden of Proof--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Millsites: Determination of Validity--Mining Claims: Abandonment--Mining Claims: Determination of Validity--Mining Claims: Recordation--Mining Claims: Title--Rules of Practice: Appeals: Burden of Proof--Rules of Practice: Evidence

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

5. Administrative Procedure: Hearings--Hearings--Rules of Practice: Appeals: Hearings--Rules of Practice: Hearings

A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required.

APPEARANCES: George K. Fadel, Esq., Bountiful, Utah, for appellant; Reid W. Nielson, Regional Solicitor, Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Appellant 1/ has appealed from an April 12, 1983, decision of the Utah State Office, Bureau of Land Management (BLM), declaring the Brown Dyke Nos. 28 through 31, 35 through 42, and 44 through 66 placer mining claims null and void ab initio as to that portion of the said claims in excess of 20 acres; declaring the Brown Dyke Nos. 15, 32, 33, and 34 claims null and void ab initio in their entirety; and advising appellant that the Brown Dyke Nos. 3, 28, 29, 30, and 43 claims had been declared to be null and void in the decision of the Solicitor, dated February 29, 1960 (67 I.D. 68).

1/ Appellant of record is Alumina Development Corporation of Utah as owner of the claims. San Rafael Partners was also named as lessee. Nothing in the record would indicate the existence of the lease or its terms and conditions and we therefore conclude that the lease has no bearing upon our decision.

Brown Dyke Nos. 51 through 66:

In its statement of reasons, appellant has admitted that the Brown Dyke Nos. 51 through 66 claims are limited to 20 acres each, and specifically did not appeal from the decision of BLM with respect to those claims.

Brown Dyke Nos. 28 through 50:

The Brown Dyke Nos. 28 through 31, 35 through 42, and 44 through 50 placer mining claims were declared to be null and void as to that portion of each claim in excess of 20 acres. The Brown Dyke Nos. 32, 33, and 34 were declared null and void in their entirety. The Brown Dyke Nos. 28 through 50 claims were located between April 8, 1946, and March 6, 1954. All of the claims were located in the name of Alumina Development Corporation of Utah (Alumina Development). In its statement of reasons (SOR) appellant admits that the claims were intentionally located for in excess of 20 acres (SOR at par. 5). Appellant alleges that Alumina Development located these claims on its own behalf and on the behalf of the seven incorporators, thereby entitling the "association of locators" to an aggregate of 160 acres for each claim (SOR at par. 5). In support of its contention appellant attached a copy of the Alumina Development Articles of Incorporation to its statement of reasons. These articles show that the corporation was incorporated in 1943 and had seven incorporators.

[1] Placer claims are located pursuant to the provisions of 30 U.S.C. §§ 35, 36 (1976). 2/ An association of claimants may locate an association

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2/ These code sections provide:

"§ 35. Placer claims; entry and proceedings for patent under provisions applicable to vein or lode claims; conforming entry to legal subdivisions and surveys; limitation of claims; homestead entry of segregated agricultural land

"Claims usually called 'placers,' including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands. And where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the 10th day of May 1872, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead purposes.

"§ 36. Same; subdivisions of 10-acre tracts; maximum of placer locations; homestead claims of agricultural lands; sale of improvements

placer claim encompassing up to 160 acres. The permissible size of the claim is dictated by the number of parties in the association. Thus, if the association were to contain eight individuals, the association would be able to locate a claim of 160 acres. However, 30 U.S.C. § 35 clearly dictates that: "[N]o such location shall include more than twenty acres for each individual claimant." See also Clayton S. Hale, 62 IBLA 35 (1982); Big Horn Limestone Co., 46 IBLA 98 (1980).

[2] If the persons locating the placer mining claims subsequently form a corporation with each owning stock in proportion to their claim ownership the locations are not invalid. However, if persons merely lend their names to a corporation in order to enable it to acquire more ground than is allowed, the locations are invalid. See Borgwardt v. McKittrick Oil Co., 130 P. 417, 64 Cal. 650 (1913). The policy and objective of 30 U.S.C. § 35 (1976) is to limit the quantity of placer mineral land which may be located by one person to 20 acres per claim. Mitchell v. Cline, 24 P. 164, 84 Cal. 406 (1890). The Federal courts have held that the corporation will be looked upon as a separate entity, with the right to locate no more than 20 acres. See United States v. Toole, 224 F. Supp. 440 (D. Mont. 1963); Big Calcium Co., 44 IBLA 289 (1979); United States v. Schneider Minerals, Inc., 36 IBLA 194 (1978).

[3] Appellant corporation located 160-acre placer claims. Appellant alleges that it did so on behalf of the seven incorporators and itself. This raises a far more serious question than the question of whether the claims are 20-acre or 160-acre claims. There is serious question as to the validity of the claims. If a locator has knowledge of the concealed interest and is a party to the use of dummy locators, the location is invalid. Cook v. Klonos, 164 F. 529, 90 C.C.A. 402 (1908), modified on other grounds, 168 F. 700, 94 C.C.A. 144 (1909). Appellant states in its statement of reasons that "[a]lthough the Articles of Incorporation could have been more explicit and the agency relationship otherwise established it is clear that the incorporators, eight [sic, seven] in number, intended their participation to be deemed such as to qualify their location of 160 acres per claim." The corporation clearly intended to locate claims with acreage in excess of 20 acres in size. Appellant has submitted evidence that the ownership is far from representative of the interests claimed. A simple test to apply would be whether or not, on dissolution the parties would participate equally. The stock ownership in this instance is such that upon dissolution, one shareholder would receive 99.4 percent of the assets and each of the remaining shareholders would receive 0.1 percent of the assets. Therefore, the underlying ownership of a 160-acre claim would equate to 159.04 acres to one

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fn. 2 (continued)

"Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer claim, made after the 9th day of July 1870, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona fide homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona fide settler to any purchaser."

shareholder and 0.16 acre to each of the other shareholders. 3/ The articles of incorporation further evidence that the incorporators did not intend to conduct the business of the corporation in a manner that was in compliance with the policy and objectives of 30 U.S.C. § 35 (1976). The board of directors of the corporation is elected by a majority of the outstanding shares. Any officer of the corporation can be removed at any time by a two-thirds vote of the stock. The bylaws must be approved by a majority of the outstanding stock. The general overall tenor of the articles clearly demonstrates that it was intended that the corporation be totally controlled by Joseph E. Forrester, the majority shareholder. The ownership of stock is so disproportionately in favor of the majority shareholder that the corporation is, in fact, an alter ego of Joseph E. Forrester.

It is clear that the incorporators never intended that the corporation be owned, operated, or controlled by any shareholder other than Joseph E. Forrester. In fact, without specific contractual documentation to the contrary, we draw a conclusion just the opposite of that appellant urges us to draw. When Forrester attempted to cause the claims to be located on behalf of the corporation and on his own behalf, Forrester used the corporate guise to create a dummy locator. A person cannot use the names of his friends, relatives, or employees as dummies, in order to locate for his own benefit a greater area of placer ground than is allowable by law. Cook v. Klonos, supra. Any sham or device entered into whereby one individual is to acquire by location an amount or portion of a placer mining claim in an area more than 20 acres constitutes a fraud upon the Government, from which title is to be acquired, and any location made pursuant to such scheme or device is without legal support and void. Nome & Sinook Co. v. Snyder, 187 F. 385 (9th Cir. 1911).

We accept the statement made by appellant in its statement of reasons that the claims were located on behalf of the corporation and the incorporators as being true and accurate. There is nothing in the record to refute this allegation by appellant. This being the case, the corporation located the 160 acre claims in an attempt to gain acreage in excess of the maximum allowable acreage as provided by statute. In such cases the locations are void as against public policy. Durant v. Corbin, 94 F. 382 (1899); Mitchell v. Cline, 24 P. 164, 84 Cal. 409 (1890); see Centerville Mine and Milling Co., 49 L.D. 508 (1923). While the placer claims may possibly have been valid on their face as to the ownership of 20 acres, the appellant locator's statement of its intent when locating the claims, and the documents submitted by appellant demonstrate that the claims located subsequent to incorporation, which contain in excess of 20 acres, were located in a manner which is contrary to public policy. See Nome & Sinook Co. v. Snyder, supra.

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3/ Ownership is reflected by Article XII which provided in pertinent part:

"Joseph E. Forrester-------99,396 Shares and $99,396.00 Warrants
John C. Forrester, Jr.-------100 " " 100.00 "
Stanley Young----------100 " " 100.00 "
Clarence H. Tuller----------100 " " 100.00 "
Peter C. Warwick, Jr.--------100 " " 100.00 "
Evelyn Forrester----------100 " " 100.00 "
Joseph L. Young----------100 " " 100.00 ""

[4] In 1960 and again in the statement of reasons filed by appellant, appellant alleged that a portion of the claims had been located at a date prior to that indicated by the documents on file. We note that the best evidence before this Board is the location notices filed with BLM pursuant to the recordation provisions of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). FLPMA provides that "owners of an unpatented lode or placer mining claim * * * located prior to October 21, 1976 shall * * * file in the office of the Bureau [BLM] * * * a copy of the official record of the notice of location or certificate of location * * *." 43 U.S.C. § 1744(b). A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, that document filed with BLM is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with evidence that the document filed with BLM is something other than it appears to be. Appellant has submitted no evidence to support its allegation that the location notices filed pursuant to section 1744(b) were anything other than the notices for the claims now owned by the claimant. Since appellant submitted no proof for the allegation that the Brown Dyke No. 39 placer claim now before this Board is anything other than that one located on February 21, 1953, after the date of incorporation, we conclude that the Brown Dyke No. 39 claim was located on February 21, 1953.

Based upon the evidence submitted by appellant, this Board finds that the Brown Dyke Nos. 28 through 50 placer mining claims located by appellant were located contrary to public policy and therefore are null and void ab initio in total. The decision of the State Office with respect to the Brown Dyke Nos. 28 through 50 placer mining claims is modified to reflect that the said claims are void as having been located by appellant in an attempt to acquire more that the allowable acreage, in violation of the law and public policy.

Brown Dyke No. 15:

[5] The record discloses that the Brown Dyke No. 15 was located in T. 17 S., R. 13 E., sec. 2, Salt Lake meridian, on September 1, 1939. The record further shows that this section was conveyed to the State of Utah in 1896. Since the land was no longer owned by the United States, it was not open to location at the time that appellant's predecessors located the claim. Appellant has failed to offer anything to demonstrate that the determination was incorrect. A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required. KernCo Drilling Co., 71 IBLA 53 (1983). As stated in the previous Alumina Development case, unless appellant comes forward with affirmative evidence that the determination was incorrect, there is no reason to order a hearing to determine that the determination is, in fact, correct. Alumina Development Corporation of Utah, 67 I.D. 68 (1960).

Brown Dyke Nos. 3, 4, 12, 25:

The BLM determination stated that portions of the Brown Dyke Nos. 3, 4, 12, and 25 claims were void in part. The BLM ownership map for the State

of Utah indicates that a portion of the land within the said claims is in fact, in private ownership. Without evidence to the contrary, this Board will uphold the record. Appellant has presented no such evidence. Therefore, the decision of the State Office declaring the Brown Dyke Nos. 3, 4, 12, and 25 claims void in part is upheld. We further note that the record discloses that the matter of the validity of portions of the Brown Dyke No. 3 placer mining claim was the subject of a previous decision. See Alumina Development Corporation of Utah, supra.

Summary

In summary, the matter of the validity of the Brown Dyke Nos. 3, 4, 12, 15, 25, and 28 through 50 claims are before this Board. The determination of this Board with respect to each of these claims is found in Appendix "A" to this decision and the determination therein stated is incorporated in this decision by reference.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, and modified in part.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

APPENDIX "A"

| UMC NUMBER | CLAIM NAME | BLM FINDING | IBLA HOLDING |
|---|---|---|---|
| 128115 | Brown Dyke No. 3 (A-28171) | void ab initio " | affirmed |
| 128116 | Brown Dyke No. 4 | void in part (a) | " |
| 128124 | " " " 12 | void in part (a) | " |
| 128137 | " " " 25 | void in part (a) | " |
| 128140 | " " " 28 | (A-28171) | void in entirety |
| 128141 | " " " 29 | (A-28171) | " |
| 128142 | " " " 30 | (A-28171) | " |
| 128143 | " " " 31 | 20 acres only | " |
| 128144 | " " " 32 | void in entirety | " |
| 128145 | " " " 33 | void in entirety (a) | " |
| 128146 | " " " 34 | void in entirety (a) | " |
| 128147 | " " " 35 | 20 acres only | " |
| 128148 | " " " 36 | 20 acres only | " |
| 128149 | " " " 37 | 20 acres only | " |
| 128150 | " " " 38 | 20 acres only | " |
| 128151 | " " " 39 | 20 acres only | " |
| 128152 | " " " 40 | 20 acres only | " |
| 128153 | " " " 41 | 20 acres only | " |
| 128154 | " " " 42 | 20 acres only | " |
| 128155 | " " " 43 | invalid (A-28171)(a) | " |
| 128156 | " " " 44 | 20 acres only | " |
| 128157 | " " " 45 | 20 acres only | " |
| 207831 | " " " 46 | 20 acres only | " |
| 128158 | " " " 47 | 20 acres only | " |
| 128159 | " " " 48 | 20 acres only | " |
| 128160 | " " " 49 | 20 acres only | " |
| 128161 | " " " 50 | 20 acres only | " |
| 128162 | " " " 51 | 20 acres only | Not before the Board |
| 128168 | " " " 57 | 20 acres only | " " |
| 128169 | " " " 58 | 20 acres only | " " |
| 128170 | " " " 59 | 20 acres only | " " |
| 128171 | " " " 60 | 20 acres only | " " |
| 128172 | " " " 61 | 20 acres only | " " |
| 128173 | " " " 62 | 20 acres only | " " |
| 128174 | " " " 63 | 20 acres only | " " |
| 128175 | " " " 64 | 20 acres only | " " |
| 128176 | " " " 65 | 20 acres only | " " |
| 128177 | " " " 66 | 20 acres only | " " |

(a) Title to the minerals is no longer in the United States.